

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

ORDER

Adopted: November 7, 2002

Released: November 8, 2002

By the Commission:

1. In this Order, we ask the Federal-State Joint Board on Universal Service (Joint Board) to review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.¹ In particular, we request the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing service, as well as the Commission's rules regarding support for second lines.² We request that the Joint Board provide recommendations to the Commission regarding if and how those rules should be modified. We anticipate that the Joint Board will seek public comment on whether these rules continue to fulfill their intended purposes, and whether modifications are warranted in light of developments in the telecommunications marketplace. We also ask the Joint Board to examine the process for designating ETCs.

2. Section 254(b) of the Act directs the Joint Board and Commission to base policies for the preservation and advancement of universal service on several general principles, including the principle that there should be specific, predictable, and sufficient Federal and State universal service support mechanisms.³ The Commission adopted the additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies.⁴ Consistent with this principle and

¹ See generally Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the Act).

² See 47 C.F.R. § 54.307. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8828-8030, at paras. 94-96 (1997) (*First Report and Order*).

³ See 47 U.S.C. § 254(b). These principles also include: (1) quality services should be available at just, reasonable, and affordable rates; and (2) consumers in all regions of the Nation should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

⁴ See *First Report and Order*, 12 FCC Rcd at 8801, paras. 46-48. Section 254(b)(7) of the Act allows the Commission to add to the list of universal service principles "[s]uch other principles as the Joint Board and the

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with the Joint Board's recommendation, the Commission determined in 1997 that federal universal service support should be made available, or "portable," to all ETCs that provide supported services, regardless of the technology used.⁵ Section 254(e) of the Act instructs that a carrier that receives support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁶ Furthermore, pursuant to section 214(e), all ETCs must provide service and advertise its service throughout the entire service area.⁷

3. Under the Commission's rules, a competitive ETC that serves a customer in an incumbent local exchange carrier's (LEC) service area receives the same per-line amount of high-cost universal service support that the incumbent LEC would receive for serving that same customer.⁸ The Commission's rules do not distinguish between primary and secondary lines; therefore, multiple connections to a single end-user in high-cost areas may receive universal service support.⁹ In addition, a competitive ETC that provides supported services utilizing unbundled network elements (UNEs) receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC.¹⁰ In order to receive universal service support, competitors must obtain ETC status from the relevant state commission, or the Commission in cases where the state commission lacks jurisdiction.¹¹

4. Since adoption of these rules in 1997, there have been many changes in the telecommunications marketplace. As competitive ETCs enter new markets and expand services, they are increasingly qualifying for high-cost universal service support. For example, based on Universal Service Administrative Company (USAC) data, competitive ETCs received approximately \$14 million out of \$803 million high-cost support disbursed in the third quarter of

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Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act." See 47 U.S.C. §254(b)(7).

⁵ *First Report and Order*, 12 FCC Rcd at 8932-8934, 8944-8945. See also *Alenco Communications, Inc. v. Federal Communications Commission*, 201 F.3d 608, 621-622 (5th Cir. 2000) ("...portability is not only consistent with predictability, but also is dictated by the principles of competitive neutrality and the statutory command that universal service support be spent 'only for the provision, maintenance, and upgrading of facilities and services for which the [universal service] support is intended.'").

⁶ 47 U.S.C. § 254(e).

⁷ 47 U.S.C. § 214(e).

⁸ 47 C.F.R. § 54.307(a). A competitive ETC serving customers in a rural carrier's service area receives portable intrastate high-cost loop support based on the embedded costs of the incumbent LEC, whereas a competitive ETC serving customers in a non-rural carrier's service area receives portable intrastate high-cost support based on the forward-looking economic cost of serving customers in that service area. See also 47 C.F.R. § 54.309(a).

⁹ See *First Report and Order*, 12 FCC Rcd at 8828-8830, paras. 94-96. In its 1996 recommendations to the Commission regarding universal service, the Joint Board recommended that support be limited to the provision of a single connection to a subscriber's primary residence and to businesses with only a single connection. The Joint Board also recommended that support not be provided to second residences. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 132-134 (1996). In declining to adopt this recommendation, the Commission indicated it would continue to evaluate this recommendation as it further developed a support mechanism based on forward looking economic costs.

¹⁰ 47 C.F.R. § 54.307(a)(2).

¹¹ See 47 U.S.C. § 254(e)(1), (e)(6).

2002, or 1.8% of total high-cost support.¹² This is up from approximately \$2 million out of \$638 million high-cost support disbursed in the first quarter of 2001, or 0.4% of total high-cost support.¹³

5. The Commission recognized in the *Rural Task Force Order* that support for competitive ETCs is not included within the cap on rural high-cost loop support. The Commission indicated that excessive growth in the fund is possible during the life of the five-year plan “if incumbent carriers lose many lines to competitive eligible telecommunications carriers, or if competitive eligible telecommunications carriers add a significant number of lines.”¹⁴ The Commission invited commenters to address whether measures might be necessary to prevent such growth, and also indicated its intent to closely monitor these matters, consistent with its obligation under section 254 to maintain a specific, predictable, and sufficient universal service fund.¹⁵ Issues related to support for ETCs in competitive study areas have also been raised in a number of other Commission proceedings,¹⁶ as well as in petitions filed with the Commission. For example, ACS Fairbanks filed a petition for declaratory ruling requesting that high-cost support for competitive ETCs be calculated based on their own costs and the Commission establish requirements for the receipt of high-cost loop support for competitive

¹² Based on data provided by staff of the Universal Service Administrative Company. *See also* Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base For the Third Quarter 2002, Appendix HC 1 (Universal Service Administrative Company, May 2, 2002).

¹³ Based on data provided by staff of the Universal Service Administrative Company. *See also* Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base For the First Quarter 2001, Appendix HC 1 (Universal Service Administrative Company, November 2, 2000).

¹⁴ *See Federal-State Joint Board on Universal Service, and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11325-11327, at paras. 207-211 (2001), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001) (*Rural Task Force Order*) (“[A]s an incumbent “loses” lines to a competitive eligible telecommunications carrier, the incumbent must recover its fixed costs from fewer lines, thus increasing its per-line costs. With higher per-line costs, the incumbent would receive greater per-line support, which would also be available to the competitive eligible telecommunications carrier for each of the lines that it serves. Thus a substantial loss of an incumbent’s lines to a competitive eligible telecommunications carrier could result in excessive fund growth.”).

¹⁵ *Id.* *See also Rural Task Force Order*, 12 FCC Rcd at 11327, para. 211.

¹⁶ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Order on Reconsideration, FCC 02-171, at para. 15 (rel. June 13, 2002); *Petition for Reconsideration of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers by National Telephone Cooperative Association*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Petition for Reconsideration, filed December 31, 2001 (challenging application of the portability rules to Interstate Common Line Support (ICLS)); *Petition for Reconsideration of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers by Western Alliance*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Petition for Reconsideration, filed December 31, 2001 (“The Commission should reconsider the MAG Order and eliminate the provision of portable ICLS support to CETCs on the basis of the actual costs of rate-of-return carriers”).

ETCs using loops purchased as UNEs.¹⁷ In addition, the National Telecommunications Cooperative Association filed a petition for rulemaking requesting that the Commission define the terms “captured” and “new” in section 54.307 of the Commission’s rules so as to limit the support to lines previously served by the incumbent LEC or lines ordered by customers not previously served by the incumbent LEC.¹⁸

6. In light of these developments, we believe that it is appropriate to request the Joint Board to review the Commission’s rules relating to support in competitive study areas and support for second lines. We also ask the Joint Board to examine the process for designating ETCs. The Joint Board should address how its recommendations regarding the issues set forth below further the universal service goals outlined in section 254 of the Act, including the principle of competitive neutrality.¹⁹ In addition, the Joint Board should consider how its analysis relates to the five-year time frame for high-cost support adopted in the *Rural Task Force Order*.²⁰

7. We ask the Joint Board to review the methodology for calculating support for ETCs in competitive study areas. In the *First Report and Order*, the Commission determined that it was appropriate to calculate per-line portable universal service support for all ETCs based on the support that the incumbent LEC would receive for the same line.²¹ The Commission reasoned that calculating support based on the incumbent LEC’s costs would aid the emergence of competition and would be the least burdensome way to administer the support mechanisms.²² In addition, the Commission explained that although a competitive ETC may have different costs than the incumbent LEC, a competitive ETC must also comply with section 254(e) of the Act, and that section 214(e) requirements would prevent competitive ETCs from profiting by limiting service to low cost areas.²³ Some groups have argued that this methodology provides a windfall and creates an unfair advantage for competitive ETCs with lower costs, whereas others argue that the current rules are necessary for competitive neutrality and are the least administratively burdensome way to administer support.²⁴ We ask the Joint Board to review the methodology for

¹⁷ See ACS Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 245(e) of the Communications Act, filed July 24, 2002 (ACS Fairbanks Petition); *Wireline Competition Bureau Seeks Comment on ACS of Fairbanks, Inc. Petition for Declaratory Ruling and Other Relief*, CC Docket No. 96-45, Public Notice, DA 02-1853 (rel. Aug. 1, 2002).

¹⁸ National Telecommunications Cooperative Association, Petition for Expedited Rulemaking, filed July 26, 2002 (NTCA Petition); *Consumer and Governmental Affairs Bureau Reference Information Center Petitions for Rulemaking Filed*, Public Notice, Report No. 2567 (rel. Aug. 8, 2002). We direct the Joint Board’s attention to the records developed pursuant to the public notices released by the Commission relating to the ACS Fairbanks Petition and NTCA Petition. We intend to address these petitions in conjunction with our action in response to the Joint Board’s Recommended Decision.

¹⁹ See 47 U.S.C. § 254(b); *First Report and Order*, 12 FCC Rcd at 8801, paras. 46-48.

²⁰ See *Rural Task Force Order*, 16 FCC Rcd at 11256-11259, paras. 24-30.

²¹ An incumbent LEC’s per-line support is calculated by dividing the incumbent LEC’s universal service support payment by the number of loops served by that incumbent LEC. *First Report and Order*, 12 FCC Rcd at 8932-8934, 8944-8945. See also 47 C.F.R. § 54.307(a)(1).

²² *Id.*

²³ *First Report and Order*, 12 FCC at 8933, para. 289. See also 47 U.S.C. § 254(e); 47 U.S.C. § 214(e).

calculating support for ETCs in competitive study areas, taking into consideration the universal service principles outlined in section 254 of the Act and the principle of competitive neutrality. We also ask the Joint Board to examine the rules governing calculation of high-cost support for competitive ETCs utilizing UNEs.²⁵

8. Support for competitive ETCs currently is not capped under the Commission's rules. On the other hand, the Commission's rules limit the overall amount of rural high-cost loop support available to incumbent LECs.²⁶ When the Commission adopted these rules in 2001, it concluded that the modified embedded cost mechanism would provide rural carriers with specific, predictable and sufficient support over the next five years.²⁷ The Joint Board should address the potential benefits and costs of modifying these rules for stability, predictability, and sufficiency of the fund, as well as their potential effects on competition and competitive neutrality.²⁸ In addition, the Joint Board should address the specific concerns raised in the *Rural Task Force Order* regarding excessive growth in the fund if incumbent rural carriers lose a significant number of lines to competitive ETCs.²⁹ The Joint Board should also consider the methodology for determining the location of a line served by a mobile wireless service provider, and whether modifications are warranted.³⁰

9. The Joint Board should also consider the extent to which the Commission's current rules relating to support for second lines may impact the size of the universal service

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²⁴ Compare ACS Fairbanks Petition at 36-37 (stating that competitive ETCs should provide cost documentation to substantiate receipt of any form of high-cost support) with Comments of General Communication, Inc. to Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act of ACS Fairbanks, Inc., filed September 3, 2002 (opposing proposal to base universal service support to competitive ETCs on competitive ETCs' costs).

²⁵ *Id.*

²⁶ See 47 C.F.R. § 36.603. The total amount of non-rural high-cost support is limited by operation of the underlying forward-looking mechanism. 47 U.S.C. 54.309(a); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket No. 98-77, Report and Order in CC Docket 98-166, 16 FCC Rcd 19613 (2001), *recon. pending*.

²⁷ See *Rural Task Force Order*, 16 FCC Rcd at 11258-11259, paras. 28-30.

²⁸ See *Rural Task Force Order*, 16 FCC Rcd at 11257, para. 27 (quoting *Alenco*, 201 F.3d at 619). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 02J-2, at para. 14 (rel. Oct. 16, 2002) ("The Commission has indicated that 'sufficiency' requires that universal service support not be excessive, citing the United State Court of Appeals for the Fifth Circuit's caution that 'excessive funding may itself violate the sufficiency requirements of the Act.'").

²⁹ See *Rural Task Force Order*, 16 FCC Rcd at 11325-11327, paras. 207-211. In the *Rural Task Force Order*, the Commission declined to freeze high-cost loop support on a per-line basis in rural carrier study areas where a competitive ETC initiates service. The Commission reasoned that: (1) a freeze may be of limited benefit and could freeze support at high levels; (2) it is speculative that competitive ETCs will capture a substantial percentage of lines in five years; (3) the indexed cap on the high-cost loop fund will limit excessive growth to a certain extent; (4) it may give incentive for incumbents to oppose competitive entry; and (5) it would be complex and administratively burdensome. See *Rural Task Force Order*, 16 FCC Rcd at 11325-11326, paras. 207-208.

³⁰ See 47 C.F.R. 54.507(b).

fund, and provide recommendations on whether the Commission should adopt modifications in this area. Under our current rules, all residential and business connections provided by ETCs are eligible for high-cost support.³¹ In adopting these rules in 1997, the Commission recognized that “overly expansive universal service mechanisms potentially could harm all consumers by increasing the cost of telecommunications services for all.”³² At that time, the Commission indicated it would continue to evaluate the issue. We now ask the Joint Board to consider whether the goals of section 254 would be served if support were limited to a single connection to the end-user – whether provided by the incumbent or a competitive ETC. We also ask the Joint Board to consider whether such a rule would be competitively neutral and how it would impact competition.

10. Finally, the Joint Board should address the system for resolving requests for ETC designations under section 214(e)(2) of the Act.³³ Some parties have argued that shortcomings in the current system hamper the emergence of competition in rural areas, whereas others have expressed concerns that universal service goals will be undermined if state commissions do not impose similar universal service obligations on incumbent LECs and competitive ETCs.³⁴ Taking into consideration these concerns, we ask the Joint Board to consider whether it is advisable to establish federal processing guidelines for ETC applications, and if so, what should be included in such guidelines.³⁵ Furthermore, in the *Rural Task Force Order*, the Commission determined that the level of disaggregation of support should be considered in determining whether to certify new ETCs for a service area other than a rural carrier’s entire study area.³⁶ We ask the Joint Board to consider whether the Commission should provide additional guidance regarding the manner in which the level of disaggregation of support should be considered, and if so, what guidance the Commission should provide.

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214(e), 254, and 410, that this Order is adopted.

12. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214(e), 254, and 410, that the Federal-State Joint Board on Universal Service is requested to review the

³¹ See *First Report and Order*, 12 FCC Rcd at 8828-8830, paras. 94-96.

³² *First Report and Order*, 12 FCC Rcd at 8829, para. 95.

³³ 47 U.S.C. § 214(e)(2).

³⁴ See, e.g., Letter from David Sieradzki, Competitive Universal Service Coalition to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Notice, filed June 25, 2002 (arguing that states should be prohibited from imposing cumbersome and unnecessary reporting obligations on competitors); Letter from Stuart Polikoff, Organization for the Promotion and Advancement of Small Telecommunications Companies to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Notice, filed August 22, 2002 (stating that the Commission should consider whether to “provide state public utility commissions with a standardized list of minimum qualifications and requirements to be used in reviewing potential and existing eligible telecommunications carrier (ETC) designations in rural service areas.”).

³⁵ In considering this issue, the Joint Board should consider the impact of the Fifth Circuit’s decision regarding the Commission’s ability to prohibit states from imposing additional eligibility criteria on ETCs. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

³⁶ See *Rural Task Force Order*, 16 FCC Rcd at 11308-11309, para. 164.

Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier is providing service and support for second lines and provide recommendations to the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary